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No. 98-720

In the Supreme Court of the United States

OCTOBER TERM, 1998

JOHN GEORGOPOULOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the intent element of 29 U.S.C. 186(d)(2)—which makes it a crime when any person "willfully violates" Section 186's prohibition against payments from employers to representatives of their employees —requires a jury finding that the defendant acted with knowledge that his conduct was unlawful.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 149 F.3d 169.

JURISDICTION

The judgment of the court of appeals was entered on July 24, 1998. The petition for a writ of certiorari was filed on October 22, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Eastern District of New York, petitioner was convicted of conspiring to accept payments from an employer to an officer of a labor organization, in violation of 18 U.S.C. 371, and of willfully accepting or aiding and abetting the acceptance of such payments, in violation of 29 U.S.C. 186(b)(1) and (d)(2) and 18 U.S.C. 2. He was sentenced to 13 months' imprisonment, to be followed by three years' supervised release, and was fined $6,000. Pet. C.A. App. A159-A164; Pet. App. 2a-3a. The court of appeals affirmed. *Id.* at 1a-7a.

1. In 1986, petitioner and his co-defendant, Robert Skeries, were elected president and vice-president, respectively, of Local 138 of the International Brotherhood of Teamsters. Members of Local 138 worked primarily as truck drivers and warehousemen for food manufacturers and wholesalers. Gov't C.A. Br. 3.

Petitioner and Skeries took office in January 1987. During the Christmas season of their first year in office, several employers offered them payoffs in the guise of Christmas gratuities, which they agreed to accept. From 1987 through 1994, they accepted more than $100,000 in payoffs from employers. Gov't C.A. Br. 3-11, 30.

2. Petitioner was indicted on one count of conspiracy to violate 29 U.S.C. 186(b)(1), and one count of a substantive violation of Section 186(b)(1). Section 186(b)(1) makes it generally "unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section." In turn, Section 186(a)(2) makes it generally "unlawful for any employer * * * to pay, lend, or

deliver, or agree to pay, lend, or deliver, any money or other thing of value * * * to any labor organization, or any officer or employee thereof, which represents * * * any of the employees of such employer." Certain exceptions to those prohibitions are set forth in Section 186(c). Under 29 U.S.C. 186(d)(1), any person who "willfully and with intent to benefit himself or to benefit other persons" accepts a payment that does not meet the requirements for the exceptions set forth in subsections (c)(4) through (9) is guilty of a crime. Under Section 186(d)(2), any person who otherwise "willfully violates" the proscriptions of Section 186 is guilty of a felony, unless the money or thing of value accepted does not exceed $1,000, in which case the person is guilty only of a misdemeanor.

At trial, petitioner requested that the court instruct the jury that "'[w]illfully' means to act with knowledge that one's conduct is unlawful and with the intent to do something the law forbids, that is to say with the bad purpose to disobey or to disregard the law." Pet. C.A. App. A97; Pet. App. 3a. The district court declined to give the jury petitioner's definition of "willfulness." *Id.* at 3a-4a. Instead, the court charged that the government had to prove beyond a reasonable doubt that petitioner

> acted knowingly and willfully [in that he] knew what he was doing and that he did it deliberately and voluntarily, and not because of mistake, accident or inadvertence.
>
> All that is necessary to prove a willful violation for purposes of Count Two is that the defendant had knowledge of the payments and knowledge that payments came from an employer whose workers he represented.

> The government is not required to prove with respect to Count Two that a union official who was accused of taking unlawful payments of money from employers or persons whom the official's union represents did so with an evil or bad purpose.
>
> It is not necessary for purposes of Count Two that the government prove that the defendant had knowledge or awareness of any particular statutory prohibition or of the fact that such an act or omission is prohibited by law.
>
> All that the government is required to prove with respect to Count Two regarding the alleged willful and knowing violation is that the defendant acted with knowledge of the operative facts constituting the offense.

Pet. C.A. App. A86-A87.

3. On appeal, petitioner acknowledged circuit precedent holding that, as used in Section 186, the term "willfully" does not require a showing of bad purpose or knowledge of illegality. Pet. App. 4a. Petitioner contended, however (*ibid.*), that this Court's decisions in *Ratzlaf* v. *United States*, 510 U.S. 135 (1994), and *Bryan* v. *United States*, 118 S. Ct. 1939 (1998), required such a showing.

The court of appeals affirmed. The court "adhere[d] to the well-settled law of this Circuit that the 'willfulness' element of Section 186 requires only a finding of general intent." Pet. App. 7a. The court explained that "neither *Ratzlaf* nor *Bryan* disturbed the well-settled proposition that 'willfully' is 'a word of many meanings whose construction is often dependent on the context in which it appears.'" *Id.* at 4a (quoting *Bryan*, 118 S. Ct. at 1944-1945, and citing *Ratzlaf*, 510 U.S. at

141). The court also observed that the majority of circuits that have considered the issue have consistently held that, as used in Section 186, "'willfully' requires only a finding of general intent." *Id.* at 5a (collecting cases).

The court further concluded that "the history and structure of Section 186" support its interpretation of the term "willfully." Pet. App. 5a. The court noted that, before its amendment in 1984, Section 186 had only one penalty provision (then found at Section 186(d)), which punished willful violations of Section 186, and that this penalty provision had been interpreted by the courts as requiring only proof of general intent. *Id.* at 5a-6a. It then observed (*id.* at 6a-7a) that, when Congress amended Section 186(d) in 1984, it divided that Section into two subsections: Section 186(d)(1)—which deals exclusively with violations covered by Section 186(c)(4)-(9) (governing contributions to employee trust funds and pension plans)—and Section 186(d)(2)—which punishes all other violations of Section 186. Section 186(d)(1), unlike Section 186(d)(2), requires that one have acted "willfully and with intent to benefit himself or to benefit other persons he knows are not permitted to receive a payment" under the covered provisions. See Pet. App. 6a. The court found it "clear" from this language that, "when Congress wished to provide for a heightened *mens rea* requirement * * * it stated its intentions explicitly." *Ibid.* The court therefore concluded that, by "leaving unchanged the *mens rea* requirement" in Section 186(d)(2) "for all violations not involving subsections 186(c)(4) through (c)(9)," Congress allowed the court "reasonably [to] conclude that Congress approved of the then-prevalent interpretation of Section 186's 'willfulness' element." Pet. App. 7a.

ARGUMENT

Petitioner contends that, to prove that he acted "willfully" within the meaning of 29 U.S.C. 186(d)(2), the government was required to show that he knew that his conduct was unlawful. Pet. i, 5-10. The court of appeals correctly rejected that argument. This Court recently denied review on the same issue in *Phillips* v. *United States*, 514 U.S. 1003 (1995) (No. 94-831), and there is no reason for a different result here.

1. "The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system." *Cheek* v. *United States*, 498 U.S. 192, 199 (1991). Petitioner argues that Section 186(d)(2) presents an exception to that general rule because it prohibits conduct only when a person "willfully violates" the proscriptions of Section 186. That argument is without merit.

As this Court has observed on many occasions, "willfully" is "a word of many meanings," and its construction is "often dependent on the context in which it appears." See, *e.g.*, *Bryan* v. *United States*, 118 S. Ct. 1939, 1945 (1998); *Spies* v. *United States*, 317 U.S. 492, 497 (1943). The context of Section 186(d)(2) makes clear that, to establish a violation of Section 186, Congress required proof only that the defendant acted with knowledge of his actions, and not also knowledge that those actions were illegal. Before subsection (d) was amended in 1984, it provided that "[a]ny person who willfully violates any of the provisions of * * * section [186] shall * * * be guilty of a misdemeanor." 29 U.S.C. 186(d) (1982). When Congress amended subsection (d) in 1984 to make some violations of Section 186 felonies, it divided subsection (d) into two parts. Subsection (d)(1) applies to payments that are illegal

because they do not satisfy certain technical requirements of subsections (c)(4)-(9). For those violations, Section 186(d)(1) requires proof that the person participating in the payment acted "willfully and with intent to benefit himself or to benefit other persons he knows are not permitted to receive a payment." Subsection (d)(2) applies to all other illegal payments that are not covered by subsection (d)(1), *i.e.*, payments prohibited by subsections (a) and (b) for which Congress did not provide any exception in subsection (c). For those violations, subsection (d)(2) requires proof only that the parties participating in the payment "willfully violate[d] this section."

In light of that statutory scheme, the court of appeals correctly concluded (Pet. App. 6a) that Section 186(d)(2) requires proof only that the defendant acted with knowledge of his actions, and not also proof that he acted with knowledge that those actions were illegal. "[I]t is clear that when Congress wished to provide for a heightened *mens rea* requirement—as in the case of violations of subsections 186(c)(4) through (9)—it stated its intentions explicitly." *Ibid.* Congress did not impose any such heightened intent requirement in Section 186(d)(2), however. There is, therefore, no basis in the statute for imposing a heightened *mens rea* requirement of proof that the defendant knew his conduct was illegal.

That analysis is supported by the background and legislative history of the 1984 amendments to Section 186. When those amendments were enacted, it had already been established as the majority rule in the courts of appeals that Section 186(d) did not require the government to prove that a defendant knew his conduct

was unlawful.[1] The amendments to Section 186 were enacted as part of Chapter VIII of the Comprehensive Crime Control Act of 1984, and were identical to amendments passed by the Senate in 1983.[2] The Senate committee reports accompanying the 1984 Act and the 1983 bill indicate that Congress included the "intent to benefit" language in Section 186(d)(1) because it was concerned that, under existing law, "willfully" carried the connotation of general intent, and that, absent a requirement of "intent to benefit," a person could be prosecuted for violations of the new technical requirements of subsections (c)(4) through (9) even if he believed his actions were lawful. See S. Rep. No. 225, 98th Cong., 1st Sess. 298 (1983); S. Rep. No. 83, 98th Cong., 1st Sess. 12-13 (1983). The original committee report also noted, however, that the transactions proscribed by the new subsections (c)(1) through (3) "are not likely to be innocently motivated." *Ibid.* Therefore, the committee determined "not to include a specific intent requirement for prosecutions under subsection (d)(2). The mens rea requirement for prosecutions under subsection (d)(2) will continue to be 'willfully.'"

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[1] See *United States* v. *Bloch*, 696 F.2d 1213, 1216 (9th Cir. 1982); *United States* v. *Pecora*, 484 F.2d 1289, 1294 (3d Cir. 1973); *United States* v. *Overton*, 470 F.2d 761, 767 (2d Cir. 1972), cert. denied, 411 U.S. 909 (1973); *United States* v. *Carter*, 311 F.2d 934, 943 (6th Cir.), cert. denied, 373 U.S. 915 (1963); but see *United States* v. *Inciso*, 292 F.2d 374, 380 (7th Cir.) (stating that Section 186(d) "contemplates proof of an awareness of the restrictions of that section or a reckless disregard for that section"), cert. denied, 368 U.S. 920 (1961).

[2] See Comprehensive Crime Control Act of 1984, Pub. L. No. 96-473, Tit. II, § 801, 98 Stat. 2131; S. Rep. No. 225, 98th Cong., 1st Sess. 297 & n.1 (1983); cf. 129 Cong. Rec. 16,367, 16,378 (1983); S. Rep. No. 83, 98th Cong., 1st Sess. 2 (1983).

Ibid. Because Congress left the willfulness requirement of former Section 186(d) unchanged when it created Section 186(d)(2), it is presumed that Congress intended "willfully" to require a finding only of general intent. See *Miles* v. *Apex Marine Corp.*, 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it passes legislation.").

2. Petitioner argues (Pet. 5-8) that, under *Ratzlaf* v. *United States*, 510 U.S. 135 (1994), and *Bryan* v. *United States*, 118 S. Ct. 1939 (1998), Section 186(d) must be read to require proof that the defendant knew that his actions were illegal. That contention is incorrect.

In *Ratzlaf*, the Court held that the statutory prohibition against structuring currency transactions to avoid reporting requirements, which punished one who "willfully violat[ed]" that prohibition, required proof that the defendant knew that the structuring was unlawful. See 510 U.S. at 138, 149. But as the Court subsequently explained, the decision in *Ratzlaf* was based in large part on the fact that the statute at issue was "highly technical" and "presented the danger of ensnaring individuals engaged in apparently innocent conduct." *Bryan*, 118 S. Ct. at 1946-1947; see also *Bates* v. *United States*, 118 S. Ct. 285, 290 n.6 (1997) (explaining that *Ratzlaf* was based on the "particular statutory context of currency structuring"). By contrast, Section 186 broadly "outlaws all payments, with stated exceptions, between employer and [employee] representative." *United States* v. *Ryan*, 350 U.S. 299, 305 (1956). Section 186(b)(1) establishes a straightforward ban on a union officer's acceptance of payments from an employer; its "reciprocal" provision, Section 186(a), is an equally straightforward ban on an employer's payments to any representative of its employees. See *Arroyo* v. *United States*, 359 U.S. 419, 423 (1959). Thus, unlike

the technical currency structuring statute at issue in *Ratzlaf*, Section 186(b)(1)'s payment ban is simply worded and readily comprehensible, and Section 186(d)(2)'s "willfully violates" language need not be construed to require knowledge of illegality in order to avoid the imposition of criminal sanctions on persons whose conduct is inadvertent.

In *Bryan*, the defendant contended that 18 U.S.C. 924(a)(1)(D)—which punishes one who "willfully" violates various provisions of federal law relating to firearms, including 18 U.S.C. 922(a)(1)(A), prohibiting dealing in firearms without a federal license—required proof, not just that the defendant knew that his conduct was unlawful, but also the "more particularized showing" (118 S. Ct. at 1945) that he knew of the federal licensing requirement (*id.* at 1942). The government acknowledged that the willfulness element in Section 924(a)(1)(D) required it to show that the defendant knew that his conduct was unlawful, because other provisions of Section 924(a) impose criminal penalties on one who "knowingly" violates other federal firearms statutes. See 118 S. Ct. at 1943, 1945-1946. The Court observed in *Bryan* that, because "'knowingly' does not necessarily have any reference to a culpable state of mind or to knowledge of the law," it was reasonable to conclude that "knowingly" in that statute referred to a factual knowledge, and that "willfully" referred to an "evil-meaning mind." *Id.* at 1945-1946.

The structure of Section 186(d) is quite different from that of 18 U.S.C. 924(d). No offense in Section 186(d) requires proof simply of a "knowing" violation of the law. To the contrary, the element of willfulness, which is required for violations of Section 186(a) and (b), is the lesser of the two *mens rea* elements contained within the statute. See pp. 3, 6-7, *supra*. Accordingly, it is

reasonable to conclude that, in Section 186(d)(2), Congress used the term "willfully" only to denote a knowing, voluntary act. See *Bryan*, 118 S. Ct. at 1945 n.12 (observing that "the word [willfully] often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental"); *Cheek*, 498 U.S. at 209 (Scalia, J., concurring in the judgment) (noting that, "in many contexts, [the word] 'willfully' refers to consciousness of the act but not to consciousness that the act is unlawful").

3. Petitioner also contends (Pet. 4-5) that the decision below conflicts with decisions of the Seventh Circuit. Review on that basis is not warranted.

Petitioner acknowledges (Pet. 4-5) that, like the Second Circuit, the Third, Sixth, Ninth, and Eleventh Circuits have rejected the argument that Section 186(d)(2) requires proof that the defendant knew his conduct was illegal. See pp. 7-8, *supra* (discussing pre-1984 case law); see also *United States* v. *Phillips*, 19 F.3d 1565, 1581-1582 (11th Cir. 1994), cert. denied, 514 U.S. 1003 (1995). Petitioner argues, however, that "[t]he Seventh Circuit has consistently held that the willfulness language of Section 186 requires the prosecution to prove that a defendant was aware of or recklessly disregarded the illegality of his conduct." Pet. 4. It is not clear, however, that there is a genuine conflict between the Seventh Circuit and the circuits adhering to the majority rule.

In *United States* v. *Inciso*, 292 F.2d 374, 380, cert. denied, 368 U.S. 920 (1961), the Seventh Circuit held that "the term 'willfully violates' in Section 186(d) contemplates proof of an awareness of the restrictions of that section or a reckless disregard for that section." Then, in *United States* v. *Keegan*, 331 F.2d 257, cert. denied, 379 U.S. 828 (1964), the Seventh Circuit ex-

plained that "[t]he minimum proof to convict under [Section] 186," *i.e.*, "reckless disregard for that section," means "actual knowledge" of the "material facts surrounding the proscribed conduct" plus "knowledge that this conduct is likely to be illegal"—by which the *Keegan* court meant that "a reasonable man would be aware that such conduct would likely be illegal," *id.* at 262. In applying those standards, however, the *Keegan* court upheld an instruction that defined "willfully" as "knowingly and intentionally," further defined "knowingly" to require "only a knowledge of the existence of the facts in question, when those facts are such as to bring the act or omission within the prohibition of the law," and charged that there was no requirement "that there be any knowledge or awareness that such act or omission is in fact prohibited by law." *Id.* at 261. As the Eleventh Circuit has noted, a jury instruction like the one approved in *Keegan* is the "practical equivalent of a general intent jury instruction." *Phillips*, 19 F.3d at 1581 n.27.

More recently, in *United States* v. *Papia*, 910 F.2d 1357, 1362 (1990), the Seventh Circuit appeared to reaffirm its holding in *Inciso* that Section 186(d) requires "an awareness of or reckless disregard for § 186(d)'s restrictions." In *Papia*, however, the court upheld the trial court's jury instruction that "[a]n act is done 'willfully' if done voluntarily and intentionally, and with the intent to do something the law forbids; that is to say, with a purpose either to disobey or disregard the law," against the defendant's contention that the trial court should have required the government to show that she acted with an intent to benefit herself or another. *Ibid.* (emphasis omitted). Because the court concluded that the jury was given a specific intent instruction similar to the one requested by the

defendant, it had no occasion to decide whether Section 186(d)(2) required such an instruction.

Moreover, the *Papia* court did not consider the legislative history of the 1984 amendments to Section 186(d), and it did not have the benefit of the extensive analysis of the statutory structure and legislative history undertaken by the Eleventh Circuit in *Phillips*, *supra*, and now by the court of appeals below. If the issue should return to the Seventh Circuit, it may reconsider its approach to Section 186(d) in light of those recent decisions. And since the definition of "willfully" in Section 186(d) has been litigated in the courts of appeals only three times since 1984, there does not appears to be any pressing need for this Court to decide the issue now.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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